IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

CRL.A.No. 696 of 1998(B)

ST.1617/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEDUMANGAD
.....

APPELLANT/COMPLAINANT:

R.VIJAYAN,S/O.RAMAKRISHNA PANICKER,
SAROJ KRISHNA, MUTHIYANKAVU, KARIPPOORU,
MANNOORKONAM P.O.

BY ADV. SRI.L.MOHANAN
SRI.D.SAJEEV

RESPONDENT/ACCUSED:

NAZAR.S.,
PROPRIETOR, AL-MAURUF TRAVELS,
PAZHAKUTTY P.O., NEDUMANGAD, (K.N.V.HOUSE,
KALLIYODE, PANAVOOR P.O., NEDUMANGAD.)

BY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.696 OF 1998 (B)

Dated this the 24th day of January, 2007

JUDGMENT

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act contending that cheque issued by the respondent was dishonoured for 'insufficiency of funds'. After complying the statutory formalities, he filed a complaint under Section 138 of the Negotiable Instruments Act and the case was posted for the examination of the complainant. After the appearance of the complainant court below on 28.3.1998 passed the following order.

> "The complainant present. Accused present. For the examination of the complainant, complainant must be present with witnesses or take steps. Accused person must be present to 15.6.1998."

On the adjourned date, that is, 15.6.1998, accused was present. But complainant was not present. Even though application was filed stating that complainant was ill, no

medical certificate was produced and the court has not believed the genuineness of the ground of illness and therefore, acquitted the accused under Section 256(1) of the Code of Criminal Procedure. The trial court has got reasons for rejection of the application and hence acquittal of the accused for absence of the complainant under Section 256(1) of the Cr.P.C. cannot be stated as without jurisdiction. In any event, even though notice was ordered on 22.9.1998 more than eight years have passed, so far notice was not able to be served on the accused. Earlier notice was returned stating that addressee was in a foreign country. Thereafter no steps were taken for furnishing the correct address. Considering the facts and circumstances of the case, I am of the view that no interference is required in the order of acquittal. In any event, since the trial court has acquittal the accused under Section 256(1) of the Cr.P.C. for the absence of the complainant, I am of the view that there was no illegality in the order of acquittal and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.696 OF 1998

JUDGMENT

24th January, 2007